

## Article 8. Applied Behavior Analysis

**102-8-1. Definitions.** Each of the following terms, as used in the act and this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "Academic equivalent of a semester credit hour" means the prorated proportionate credit for formal academic coursework if that coursework is completed on the basis of trimester or quarter hours rather than semester hours.

(b) "Act" means applied behavior analysis licensure act.

(c) "Client" means a person who is a direct recipient of applied behavior analysis services.

(d) "Continuing education" means formally organized programs or activities that are designed for and have content intended to enhance the licensee's skill, values, ethics, and ability to practice applied behavior analysis.

(e) "Fraudulent representation" shall include the following:

- (1) Deceit;
- (2) misrepresentation; and
- (3) concealing a material fact.

(f) "Harmful dual relationship" means a professional relationship between a licensee and a client, student, supervisee, or any person who has had a significant relationship with either a current client or a person who has been a client within the past 24 months if that relationship is known to the licensee, in

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which the objectivity or competency of the licensee is impaired or compromised because of any of the following types of present or previous relationships:

- (1) Familial;
- (2) social;
- (3) emotional;
- (4) financial;
- (5) supervisory; or
- (6) administrative.

(g) "Malfeasance" means the performance of an act by a licensee that is prohibited or that constitutes wrongdoing or misconduct.

(h) "Misfeasance" means the improper performance of a lawful act by a licensee.

(i) "Nonfeasance" means the omission of an act that a licensee is required to do.

(j) "Practice setting" means the public or private agency or delivery system within which applied behavior analysis is practiced or delivered.

(k) "Related field" means a degree program in a helping profession and shall include the following:

- (1) Counseling;
- (2) education;
- (3) engineering;
- (4) healing arts;

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- (5) human services;
- (6) marriage and family therapy;
- (7) natural sciences;
- (8) social work; and
- (9) psychology.

(l) "Undue influence" means misusing one's professional position of confidence, trust, or authority over a client or supervisee or taking advantage of a client's vulnerability, weakness, infirmity, or distress for any of the following purposes:

(1) To improperly influence or change a client's or supervisee's actions or decisions;

(2) to exploit a client or supervisee for the licensee's or a third party's financial gain, personal gratification, or advantage; or

(3) to impose one's personal values, spiritual beliefs, or lifestyle on a client, student, or supervisee. (Authorized by and implementing K.S.A. 2015 Supp. 65-7505; effective, T- \_\_\_\_\_, \_\_\_\_\_; effective P- \_\_\_\_\_.)

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**102-8-2. Fees.** (a) Each applicant for licensure as an assistant behavior analyst or a behavior analyst shall pay the appropriate fee or fees as follows:

- (1) Initial assistant behavior analyst license, \$70;
- (2) initial behavior analyst license, \$70;
- (3) renewal of an assistant behavior analyst license, \$70; or
- (4) renewal of a behavior analyst license, \$120.

(b) Fees paid to the board shall not be refundable. (Authorized by and implementing K.S.A. 2015 Supp. 65-7505; effective, T- \_\_\_\_\_, \_\_\_\_\_; effective P- \_\_\_\_\_.)

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**102-8-4. Application for licensure.** (a) Each applicant for licensure as an assistant behavior analyst or a behavior analyst shall request the appropriate forms from the executive director of the board.

(b) Each applicant for licensure as an assistant behavior analyst shall submit the completed application materials to the board and perform the following:

- (1) Submit the application fee as specified in K.A.R. 102-8-2;
- (2) submit proof that the applicant has met the requirements for certification to practice applied behavior analysis at the assistant level; and
- (3)(A) Arrange for the applicant's transcripts covering all applicable college or university coursework, including the required baccalaureate degree, to be sent directly from each academic institution to the board office. Each applicant who graduated from a college or university outside the United States shall also arrange for the applicant's transcript to be translated and evaluated for degree equivalency by a source and in a manner acceptable to the board; or

(B) arrange for a copy of the applicant's transcripts covering all applicable college or university coursework, including the required baccalaureate degree, to be sent directly to the board from the certifying entity.

(c) Each applicant for licensure as a behavior analyst shall submit the completed application materials to the board and perform the following:

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- (1) Submit the application fee as specified in K.A.R. 102-8-2;
- (2) submit proof that the applicant has met the requirements for certification to practice applied behavior analysis; and
- (3)(A) Arrange for the applicant's transcripts covering all applicable college or university coursework, including the required graduate degree, to be sent directly from each academic institution to the board office. Each applicant who graduated from a college or university outside the United States shall also arrange for the applicant's transcript to be translated and evaluated for degree equivalency by a source and in a manner acceptable to the board; or
- (B) arrange for a copy of the applicant's transcripts covering all applicable college or university coursework, including the required graduate degree, to be sent directly to the board from the certifying entity.
- (d) Each applicant who has met all requirements for licensure pursuant to the act and this article of the board's regulations and has paid the initial license fee specified in K.A.R. 102-8-2 shall be licensed by the board. (Authorized by and implementing K.S.A. 2015 Supp. 65-7505; effective, T-

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**102-8-6. Supervision.** (a) Each licensed assistant behavior analyst shall be supervised by a licensed behavior analyst.

(b) Each licensed assistant behavior analyst shall receive at least 12 supervision sessions annually. Each supervision session shall require two-way interactions involving real-time visual and auditory contact. The supervision shall include the following:

(1) At least one monthly supervision session of at least one hour each. At least two of the 12 supervision sessions shall be conducted with the supervisee in person and shall include direct observation of the supervisee's provision of applied behavior analysis services to clients. Except as specified in this paragraph, no more than half of the supervision sessions may be conducted in group supervision. Under extenuating circumstances approved by the board, additional group supervision may be allowed. The licensee shall submit a written request to the board with a detailed explanation of the extenuating circumstances that are the basis of the licensee's request, which shall be submitted no later than 30 days before the request would take effect; and

(2) review, discussion, and recommendations focusing on the supervisee's practice of applied behavior analysis.

(c) Each supervisor and each supervisee shall maintain documentation of the supervision for three years after the date of supervision. (Authorized by and

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**102-8-7. License; expiration and renewal.** (a) Each license issued pursuant to the act shall expire 24 months after the date of issuance unless revoked before that time.

(b) To be considered for license renewal, each licensed assistant behavior analyst and each licensed behavior analyst shall submit the following items to the board:

- (1) A completed renewal application;
- (2) the continuing education reporting form;
- (3) the renewal fee specified in K.A.R. 102-8-2; and
- (4) for each licensed assistant behavior analyst, the following proof of

supervision required in K.A.R. 102-8-6:

(A) The name and identifying information of any licensed behavior analyst providing supervision; and

(B) documentation that supervision was provided, including dates, format, and length of time as verified by the supervisor.

(c) Each licensee who fails to renew the license before its expiration and who subsequently applies for late renewal of the license shall indicate on the late renewal application form whether the individual has continued to engage in the practice of applied behavior analysis in Kansas or has continued to represent that individual in Kansas as a licensed assistant behavior analyst or licensed behavior analyst and, if so, under what circumstances. (Authorized by and

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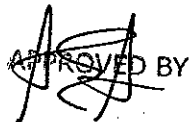
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**102-8-8. Renewal audit.** (a) Each licensee selected for a random audit shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) either the original continuing education documents that validate all continuing education hours claimed for credit during the current renewal period or other documentation of completed continuing education hours approved by the board.

(b) Continuing education hours that a renewal applicant earns after board receipt of the renewal application form shall not be approved for continuing education credit for the period being audited.

(c) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by K.S.A. 2015 Supp. 65-6705; implementing K.S.A. 2015 Supp. 65-7504 and 65-7405; effective, T-

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**102-8-9. Continuing education.** (a) Each licensed assistant behavior analyst shall complete 30 hours of documented and approved continuing education oriented to the enhancement of the licensee's practice, values, ethics, skills, or knowledge during each two-year renewal period. Continuing education hours accumulated in excess of the requirement shall not be carried over to the next renewal period.

(b) Each licensed behavior analyst shall complete 30 hours of documented and approved continuing education oriented to the enhancement of the licensee's practice, values, ethics, skills, or knowledge during each two-year renewal period. Continuing education hours accumulated in excess of the requirement shall not be carried over to the next renewal period.

(c) During each two-year renewal period and as a part of the required continuing education hours, each licensee shall complete four hours of professional ethics. These hours shall be obtained from any of the activities specified in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(9), and (e)(10).

(d) One hour of continuing education credit shall consist of at least 50 minutes of classroom instruction or at least one clock-hour of any other type of acceptable continuing education experience listed in subsection (e). One-quarter hour of continuing education credit may be granted for each 15 minutes of acceptable continuing education. Credit shall not be granted for fewer than 15 minutes.

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(e) Acceptable continuing education, whether taken in Kansas or outside the state, shall consist of the following:

(1) An academic applied behavior analysis course or an academic course oriented to the enhancement of the licensee's practice, values, ethics, skills, or knowledge that is taken for academic credit. Each licensee shall be granted 15 continuing education hours for each semester credit hour or the academic equivalent of a semester credit hour that the licensee successfully completes;

(2) an academic applied behavior analysis course or an academic course oriented to the enhancement of the licensee's practice that is audited. Each licensee shall receive continuing education credit on the basis of the actual contact time that the licensee spends attending the course, up to a maximum of 15 hours per academic credit hour;

(3) a seminar, institute, conference, workshop, or course;

(4) an activity consisting of completing a computerized interactive learning module, viewing a telecast or videotape, listening to an audiotape, or reading with a posttest;

(5) an activity consisting of completing a computerized interactive learning module, viewing a telecast or videotape, listening to an audiotape, or reading without a posttest;

(6) a cross-disciplinary offering in medicine, law, a foreign or sign language, computer science, professional or technical writing, business administration, management sciences, or any other discipline if the offering is

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clearly related to the enhancement of the licensee's practice, values, ethics, skills, or knowledge. The maximum number of allowable continuing education hours shall be 10;

(7) a self-directed learning project preapproved by the board. The maximum number of allowable continuing education hours shall be 10;

(8) providing supervision to practicum or intern students. The maximum number of allowable continuing education hours shall be 10;

(9) the first-time preparation and presentation of an applied behavior analysis seminar, institute, conference, workshop, or course, or the substantial revision of an applied behavior analysis seminar, institute, conference, workshop, or course. The maximum number of allowable continuing education hours shall be 10 for documented preparation and presentation time;

(10) the preparation of a professional applied behavior analysis article published for the first time in a professional journal, a book chapter published by a recognized publisher, or a written presentation given for the first time at a statewide or national professional meeting. If more than one licensee or other professional authored the material, the continuing education credit shall be prorated among the authors. The maximum number of allowable continuing education hours shall be 10; and

(11) participation in a professional organization or appointment to a professional credentialing board, if the goals of the organization or board are clearly related to the enhancement of applied behavior analysis practice, values,

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ethics, skills, and knowledge. Participation may include holding office or serving on committees of the organization or board. The maximum number of allowable continuing education hours shall be 10.

(f) Continuing education credit approval shall not be granted for identical programs if the programs are completed within the same renewal period.

(g) Continuing education credit shall not be granted for the following:

(1) In-service training, if the training is for job orientation or job training or is specific to the employing agency; and

(2) any activity for which the licensee cannot demonstrate to the board's satisfaction that the program's goals and objectives are to enhance the licensee's practice, values, ethics, skills, or knowledge in applied behavior analysis.

(h) Each licensee shall maintain individual, original continuing education records for three years after the renewal date. These records shall document the licensee's continuing education activity attendance, participation, or completion as specified in K.A.R. 102-8-10. (Authorized by and implementing K.S.A. 2015 Supp. 65-7505; effective, T- \_\_\_\_\_; effective P- \_\_\_\_\_.)

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**102-8-10. Documentation of continuing education.** Each of the following forms of documentation shall be accepted as proof that a licensee has completed the continuing education activity:

- (a) An official transcript or other written proof indicating the licensee's passing grade for an academic course;
- (b) a statement signed by the instructor indicating the number of actual contact hours that the licensee attended for an audited academic course;
- (c) a signed statement from the provider of a seminar, institute, conference, workshop, or course indicating that the licensee attended the program;
- (d) for each videotape, audiotape, computerized interactive learning module, or telecast that the licensee utilized for continuing education purposes, a written statement from the licensee specifying the media format, content title, presenter or sponsor, content description, length, and activity date;
- (e) a copy of a self-directed project. The licensee shall submit this copy to the board to evaluate and certify the number of credit hours that the board may grant;
- (f) written, signed verification from the university practicum or intern instructor or other official training director for whom the licensee supervised undergraduate or graduate students or from the postgraduate supervisee for whom the licensee provided supervision;

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(g) a copy of an academic course syllabus and verification that the licensee presented the course;

(h) a copy of a letter from the presentation sponsor or a copy of the brochure announcing the licensee as the presenter, the agenda of the presentation, and verification that the licensee presented the seminar, institute, conference, workshop, or course;

(i) a copy of an article or book chapter written by the licensee and verification of publication or written presentation at a professional meeting. The licensee shall submit these materials to the board to evaluate and certify the number of hours of credit to be granted; and

(j) a signed letter from a professional organization or certifying entity outlining the licensee's participation in that professional organization or credentialing board. (Authorized by and implementing K.S.A. 2015 Supp. 65-7505; effective, T- \_\_\_\_\_, \_\_\_\_\_; effective P- \_\_\_\_\_.)

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**102-8-11. Unprofessional conduct.** Each of the following acts shall be considered unprofessional conduct for a licensed assistant behavior analyst, a licensed behavior analyst, or an applicant for an assistant behavior analyst license or a behavior analyst license:

(a) Except when the information has been obtained in the context of confidentiality, failing to notify the board, within a reasonable period of time, that the licensee or applicant or any other person regulated by the board or applying for licensure has met any of the following conditions:

(1) Has had a professional license, certificate, permit, registration, certification, or professional membership granted by any jurisdiction, professional association, or professional organization that has been limited, conditioned, qualified, restricted, suspended, revoked, refused, voluntarily surrendered, or allowed to expire in lieu of or during investigatory or disciplinary proceedings;

(2) has been subject to any other disciplinary action by any credentialing board, professional association, or professional organization;

(3) has been demoted, terminated, suspended, reassigned, or asked to resign from employment or has resigned from employment, for some form of misfeasance, malfeasance, or nonfeasance; or

(4) has violated any provision of the act or any implementing regulation;

(b) knowingly allowing another person to use one's license;

(c) impersonating another person holding a license or registration issued by the board or any other agency;

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(d) having been convicted of a crime resulting from or relating to one's professional practice of applied behavior analysis;

(e) knowingly aiding or abetting any individual who is not credentialed by the board to represent that individual as a person who was or is licensed by the board;

(f) failing to recognize, seek intervention, and otherwise appropriately respond when one's own personal problems, psychosocial distress, or mental health difficulties interfere with or negatively impact professional judgment, professional performance and functioning, or the ability to act in the client's best interests;

(g) failing or refusing to cooperate within 30 days with any request from the board for a response, information, or assistance with respect to the board's investigation of any report of an alleged violation filed against oneself or any other applicant or professional who is required to be licensed by the board. Each person taking longer than 30 days to provide the requested response, information, or assistance shall have the burden of demonstrating that the person has acted in a timely manner;

(h) offering to perform or performing services clearly inconsistent or incommensurate with one's training, education, or experience or with accepted professional standards;

(i) engaging in any behavior that is abusive or demeaning to a client, student, or supervisee;

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(j) discriminating against any client, student, directee, or supervisee on the basis of age, gender, race, culture, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status;

(k) failing to advise and explain to each client the respective rights, responsibilities, and duties involved in the licensee's professional relationship with the client;

(l) failing to provide each client with a description of the services, fees, and payment expectations or failing to reasonably comply with that description;

(m) failing to provide each client with a description of the possible effects of the proposed treatment if the treatment is experimental or if there are clear and known risks to the client;

(n) failing to inform each client, student, or supervisee of any financial interests that might accrue to licensee or applicant if the licensee or applicant refers a client, student, or supervisee to any other service or if the licensee or applicant uses any tests, books, or apparatus;

(o) failing to inform each client that the client can receive services from a public agency if one is employed by that public agency and also offers services privately;

(p) failing to provide copies of reports or records to a licensed healthcare provider authorized by the client following the licensee's receipt of a formal written request, unless the release of that information is restricted or exempted

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by law or by this article of the board's regulations, or the disclosure of the information would be injurious to the welfare of the client;

(q) failing to obtain written, informed consent from each client, or the client's legal representative or representatives, before performing any of the following actions:

(1) Electronically recording sessions with the client;

(2) permitting a third-party observation of the licensee's provision of applied behavior analysis services to the client; or

(3) releasing information concerning a client to a third person, unless required or permitted by law;

(r) failing to exercise due diligence in protecting the information regarding the client from disclosure by other persons in one's work or practice setting;

(s) engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation;

(t) revealing information, a confidence, or a secret of any client, or failing to protect the confidences, secrets, or information contained in a client's records, unless at least one of the following conditions is met:

(1) Disclosure is required or permitted by law;

(2) failure to disclose the information presents a serious danger to the health or safety of an individual or the public;

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- (3) the licensee is a party to a civil, criminal, or disciplinary investigation or action arising from the practice of applied behavior analysis, in which case disclosure shall be limited to that action; or
- (4) payment for services is needed;
- (u) using alcohol or any illegal drug or misusing any substance that could cause impairment while performing the duties or services of a licensee;
- (v) engaging in a harmful dual relationship or exercising undue influence;
- (w) making sexual advances toward or engaging in physical intimacies or sexual activities with any of the following:
- (1) Any person who is a client, supervisee, or student; or
- (2) any person who has a significant relationship with the client and that relationship is known to the licensee;
- (x) making sexual advances toward or engaging in physical intimacies or sexual activities with any person who meets either of the following conditions:
- (1) Has been a client within the past 24 months; or
- (2) has had a significant relationship with a current client or a person who has been a client within the past 24 months and that relationship is known to the licensee;
- (y) directly or indirectly offering or giving to a third party or soliciting, receiving, or agreeing to receive from a third party any fee or other consideration for referring the client or in connection with performing professional services;

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(z) permitting any person to share in the fees for professional services, other than a partner, an employee, an associate in a professional firm, or a consultant authorized to practice applied behavior analysis;

(aa) soliciting or assuming professional responsibility for any clients of another agency or colleague without attempting to coordinate the continued provision of client services by that agency or colleague;

(bb) making claims of professional superiority that one cannot substantiate;

(cc) guaranteeing that satisfaction or a cure will result from performing or providing any professional service;

(dd) claiming or using any secret or special method of treatment or techniques that one refuses to disclose to the board;

(ee) continuing or ordering tests, procedures, or treatments or using treatment facilities or services not warranted by the client's condition, best interests, or preferences;

(ff) taking credit for work not personally performed, whether by giving inaccurate or misleading information or by failing to disclose accurate or material information;

(gg) if engaged in research, failing to meet the following requirements:

(1) Considering carefully the possible consequences for human beings participating in the research;

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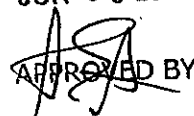
- (2) protecting each participant from unwarranted physical and mental harm;
- (3) ascertaining that each participant's consent is voluntary and informed;
- and
- (4) preserving the privacy and protecting the anonymity of each subject of the research within the terms of informed consent;
- (hh) making or filing a report that one knows to be false, distorted, erroneous, incomplete, or misleading;
- (ii) failing to notify the client promptly if one anticipates terminating or interrupting service to the client;
- (jj) failing to seek continuation of service, or abandoning or neglecting a client under or in need of professional care, without making reasonable arrangements for that care;
- (kk) abandoning employment under circumstances that seriously impair the delivery of professional care to clients and without providing reasonable notice to the employer;
- (ll) failing to terminate applied behavior analysis services if it is apparent that the relationship no longer serves the client's needs or best interests;
- (mm) when supervising, failing to provide accurate and current information, timely evaluations, and constructive consultation;
- (nn) when applicable, failing to inform a client that applied behavior analysis services are provided or delivered under supervision;

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(oo) failing to report unprofessional conduct of a licensed assistant behavior analyst, a licensed behavior analyst, or any other individual licensed by the board;

(pp) intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing another person from filing a report or record that is required by state or federal law, or inducing another person to take any of these actions;

(qq) offering to perform or performing any service, procedure, treatment, or therapy that, by the accepted standards of applied behavior analysis practice in the community, would constitute experimentation on human subjects without first obtaining the full, informed, and voluntary written consent of the client or the client's legal representative or representatives;

(rr) practicing applied behavior analysis after one's license expires; and

(ss) using without a license, or continuing to use after a license has expired, any title or abbreviation defined by regulation. (Authorized by K.S.A. 2015 Supp. 65-7505; implementing K.S.A. 2015 Supp. 65-7504 and 65-7505; effective, T- \_\_\_\_\_; effective P- \_\_\_\_\_.)

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**102-8-12. Recordkeeping.** (a) Each licensed assistant behavior analyst and each licensed behavior analyst shall maintain a record for each client that accurately reflects the licensee's contact with the client and the client's progress. Each licensee shall have ultimate responsibility for the content of the licensee's records and the records of those persons under the licensee's supervision. These records may be maintained in a variety of formats, if reasonable steps are taken to maintain the confidentiality, accessibility, and durability of the records. Each record shall be completed in a timely manner and, at a minimum, shall include the following information for each client in sufficient detail to permit planning for continuity of care:

(1) Adequate identifying data;

(2) the date or dates of services that the licensee or the licensee's supervisee provided;

(3) the type or types of services that the licensee or the licensee's supervisee provided;

(4) the initial assessment, conclusions, and recommendations;

(5) the treatment plan; and

(6) the clinical or progress notes from each session.

(b) If a licensee is the owner or custodian of client records, the licensee shall retain a complete record for the following time periods, unless otherwise provided by law:

(1) For an adult, at least six years after the date of termination of one or more contacts; and

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(2) for a client who is a minor on the date of termination of the contact or contacts, at least until the later of the following two dates:

(A) Two years past the date on which the client reaches the age of 18; or

(B) six years after the date of termination of the contact or contacts with the minor. (Authorized by and implementing K.S.A. 2015 Supp. 65-7505; effective, T-

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